

## Message Text

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ACTION EUR-12

INFO OCT-01 NEA-10 ISO-00 PM-05 NSC-05 SP-02 SS-15  
CIAE-00 DODE-00 INR-07 NSAE-00 PA-01 USIA-06  
PRS-01 L-03 /068 W  
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R 192012Z AUG 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC 0804  
INFO AMEMBASSY ROME  
AMEMBASSY TEL AVIV  
AMCONSUL BREMEN  
AMCONSUL HAMBURG

C O N F I D E N T I A L SECTION 01 OF 02 BONN 13629

E.O. 11652: GDS  
TAGS: PINT, IT, GW  
SUBJECT: THE KAPPLER AFFAIR

REF: ROME 13366 (NOTAL)

BEGIN SUMMARY: KAPPLER AND HIS WIFE ARE PRESENTLY IN LOWER SAXONY UNDER PROTECTIVE GUARD. EXTRADITION TO ITALY SEEMS RULED OUT BY THE GERMAN BASIC LAW. A GERMAN INVESTIGATION INTO KAPPLER'S WAR CRIMES HAS BEEN FORECAST, ALTHOUGH HIS HEALTH AND THE LIKELIHOOD OF LEGAL COMPLICATIONS LEAVE THE MATTER IN QUESTION. KAPPLER'S EXFILTRATION FROM ITALY HAS ATTRACTED CONSIDERABLE SYMPATHY IN GERMANY, BOTH IN LIGHT OF HIS ILLNESS AND PREVIOUS FRG REQUESTS THAT ITALY GRANT HIM A COMPASSIONATE RELEASE ON GROUNDS OF HEALTH. THE FRG APPEARS RECONCILED TO THE FACT THAT THIS EPISODE HAS COMPLICATED RELATIONS WITH ITALY BUT IS HOPEFUL THAT THE STRAINS WILL NOT LAST LONG. END SUMMARY.

1. SEVENTY-YEAR OLD HERBERT KAPPLER, WHO REPORTEDLY HAS  
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TERMINAL CANCER, WAS SMUGGLED OUT OF A ROME MILITARY HOSPITAL AUGUST 14 BY HIS WIFE AND IS NOW WITH HIS WIFE IN HER HOUSE IN SOLTAU IN THE LUNEBURG DISTRICT OF LOWER SAXONY. (KAPPLER WAS SERVING A LIFE SENTENCE IN ROME FOR RESPONSIBILITY FOR THE EXECUTION OF 335 ITALIAN HOSTAGES IN 1944). THE HOUSE IS UNDER ROUND-THE-CLOCK GUARD BY LOCAL AUTHORITIES, WHO CITE THREATS OF ITALIAN ORIGIN

TO KAPPLER'S SAFETY.

2. LEGAL ASPECTS. EXTRADITION TO ITALY APPEARS RULED OUT UNDER ARTICLE 16 OF THE FRG BASIC LAW ("NO GERMAN MAY BE EXTRADITED TO A FOREIGN COUNTRY"). WHILE UNDER SURVEILLANCE AND DE FACTO DETENTION, KAPPLER IS TECHNICALLY A FREE MAN UNTIL LEGAL ACTION HAS BEEN INITIATED AGAINST HIM BY A COMPETENT JUDGE. THE LUNEBURG PUBLIC PROSECUTOR HAS SAID THAT AN INVESTIGATION AND PROCEEDINGS AGAINST KAPPLER, RELATING TO HIS ROLE IN THE 1944 SHOOTING OF HOSTAGES IN ROME, WILL BE INITIATED. COOPERATION AND DOCUMENTATION FROM ITALIAN AUTHORITIES WILL BE SOUGHT FOR THESE PROCEEDINGS. HOWEVER, THE INITIATION OF AN INVESTIGATION CAN BE EXPECTED TO TAKE SOME WEEKS, AND THE PROCESS ITSELF MAY LAST A LONGER PERIOD OF TIME. THERE MAY ALSO BE A LEGAL QUESTION WHETHER KAPPLER, HAVING SERVED THIRTY YEARS OF A LIFE SENTENCE, COULD BE RE-TRIED OR RE-SENTENCED FOR THE SAME CRIME WITHOUT FACING DOUBLE JEOPARDY; AND THERE COULD BE LEGAL PROBLEMS WITH ANY SENTENCE INVOLVING IMPRISONMENT ON THE GROUNDS OF KAPPLER'S HEALTH. MEANWHILE, THE LUNEBURG PROSECUTOR HAS REPORTEDLY INITIATED A LOCAL LEGAL ACTION AGAINST AN ITALIAN PROSECUTOR WHO HAS ARRIVED IN SOLTAU TO CONDUCT AN INQUIRY INTO THE KAPPLER CASE WITHOUT FIRST OBTAINING CLEARANCE FROM THE LOCAL AUTHORITIES.

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3. REACTIONS. KAPPLER'S ESCAPE HAS ATTRACTED A DEGREE

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R 192016Z AUG 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC 0805  
INFO AMEMBASSY ROME  
AMEMBASSY TEL AVIV  
AMCONSUL BREMEN  
AMCONSUL HAMBURG

C O N F I D E N T I A L SECTION 02 OF 02 BONN 13629

OF PUBLIC SYMPATHY IN THE FRG. KAPPLER'S HEALTH, AND THE FACT THAT THE FRG HAS MADE PREVIOUS OFFICIAL REQUESTS TO ITALY TO RELEASE KAPPLER ON COMPASSIONATE GROUNDS, PLAY A ROLE HERE. SO DOES THE SENSATIONAL NATURE OF THE ESCAPE, WHICH HAS WON FRAU KAPPLER SOME LOCAL ADMIRATION. THIS IS NOT TO SAY THAT AN UNCRITICAL ATTITUDE HAS BEEN VOICED TOWARD KAPPLER IN THE GERMAN PRESS. REPORTING HAS CITED HIS WAR CRIMES, AND SOME EDITORIALS HAVE NOTED THE RESPONSIBILITY TO PURSUE A GERMAN INVESTIGATION INTO KAPPLER'S WARTIME ACTIVITIES. ON BALANCE, HOWEVER, THE GENERAL REACTION IS THAT COMPASSION IS CALLED FOR IN THE CASE OF THIS SICK AND AGED MAN. THIS THEME HAS BEEN PICKED UP BY OPPOSITION LEADER HELMUT KOHL WHO HAS SPOKEN OF THE NEED FOR "MERCY BEFORE THE LAW" FOR KAPPLER.

4. RELATIONS WITH ITALY. ACCORDING TO OUR FOREIGN OFFICE SOURCE, THE MEETING BETWEEN SCHMIDT AND ANDREOTTI SCHEDULED FOR AUGUST 19 WAS CANCELLED BY MUTUAL AGREE-CONFIDENTIAL

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MENT, BOTH SIDES READILY AGREEING THE MEETING WOULD BE INAPPROPRIATE AT THIS TIME. THE FRG APPEARS RECONCILED TO THE FACT THAT KAPPLER'S ESCAPE HAS COMPLICATED RELATIONS WITH ITALY, AND IS AWARE THAT THE GERMAN HANDLING OF KAPPLER IN THE WEEKS AHEAD WILL BE A PART OF THIS EQUATION. AT THE SAME TIME, OUR SOURCE FEELS THAT THE EPISODE WILL REMAIN AN IRRITANT IN RELATIONS FOR AS LONG AS IT REMAINS IN THE LIMELIGHT IN ITALY, AND IS THUS A FUNCTION OF ITALIAN RATHER THAN OF GERMAN EMOTIONS.

5. COMMENT: WE DOUBT THAT THE FRG WILL SEEK ANY ACTION ON EXTRADITION, A COURSE THAT WOULD INVOLVE AN EXCEPTION TO THE CONSTITUTION AND WOULD FACE STRONG DOMESTIC OPPOSITION. THE MANNER IN WHICH LEGAL PROCEEDINGS AGAINST KAPPLER ARE HANDLED AT THE LOCAL LEVEL IS HARD TO FORESEE, AND IS ALSO AN ISSUE WITH POTENTIAL FOR AROUSING EMOTIONAL AND COMPASSIONATE REACTION WITHIN THE FRG.

THE OUTLOOK IS THUS ONE OF SLOW AND SCRUPULOUSLY METH-  
ODICAL LEGAL PROCEEDINGS IF, IN FACT,  
GIVEN LEGAL AMBIGUITIES AND KAPPLER'S HEALTH, SUCH  
PROCEEDINGS GET OFF THE GROUND AT ALL.  
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## Message Attributes

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